

**Notice of Allowability**

Application No.

09/482,788

Examiner

Delia M. Ramirez

Applicant(s)

BERKA ET AL.

Art Unit

1652

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/27/2004.
2. ☒ The allowed claim(s) is/are 124-127, 129-142, 144-150, 156, 159, 165 and 168.
3. ☒ The drawings filed on 13 January 2000 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Status of the Application***

Claims 124-127, 129-142, 144-150, 156, 159, 165, 168 are pending.

Applicant's amendment of claims 124, 139, and cancellation of claims 128, 143, 151-155, 157-158, 160-164, 166-167, in a communication filed on 10/27/2004 are acknowledged.

### ***Reasons for Allowance***

1. The following is an Examiner's statement of reasons for allowance. Although the prior art discloses nucleic acids encoding cyclohexadepsipeptide synthetases, the Examiner has found no teaching or suggestion in the prior art directed to a mutant *Fusarium venenatum* cell comprising a disrupted nucleic acid encoding a cyclohexadepsipeptide synthetase, or a method to produce secreted heterologous polypeptides with said mutant *Fusarium venenatum* cell. Therefore, claims 124-127, 129-142, 144-150, 156, 159, 165, 168 directed to (1) a mutant *Fusarium venenatum* cell comprising a nucleic acid encoding a secreted heterologous polypeptide and a nucleic acid encoding a disrupted gene encoding a cyclohexadepsipeptide synthetase, wherein the gene encodes the cyclohexadepsipeptide synthetase of SEQ ID NO: 2 or a cyclohexadepsipeptide synthetase encoded by a polynucleotide which hybridizes under the highly stringent conditions recited in the claims, and (2) a method for producing secreted heterologous proteins with said mutant cell, are allowable over the prior art of record.
2. Claims 124-127, 129-142, 144-150, 156, 159, 165, 168 are allowed.
3. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Delia M. Ramirez whose telephone number is (571) 272-0938. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM.

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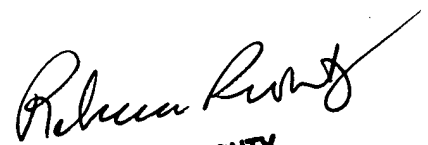
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Ponnathapura Achutamurthy can be reached on (571) 272-0928. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Delia M. Ramirez, Ph.D.  
Patent Examiner  
Art Unit 1652

DR  
November 27, 2004

  
**REBECCA E. PROUTY**  
**PRIMARY EXAMINER**  
**GROUP 1800**  
1600